

and marketable title to the real estate including the housing, the related facilities, and the site, subject to any exceptions that may be waived as provided in subpart B of part 1927 of this chapter.

(2) If a first mortgage cannot be obtained, a junior mortgage may be taken provided:

(i) The prior mortgage as affected by the State law does not contain such provisions for future advances, payment schedules, forfeiture or cancellation, foreclosure without adequate notice to junior lienholders, or other matters which may jeopardize FmHA or its successor agency under Public Law 103-354's security position or the borrower's ability to pay the loan; or

(ii) Such provisions are satisfactorily limited, modified waived, or subordinated.

(3) If it is impossible for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible.

(4) In individual cases, additional security may be advisable to ensure that the loan objectives will be carried out. For example, to provide for more effective management and operation, one or more of the following types of security may be required.

(i) A mortgage on other real estate owned by the applicant.

(ii) A pledge, assignment, mortgage, or other security interest in income from the housing.

(iii) A cosigner on the promissory note, letter of credit, endorsements, assessments, user agreements, personal liability agreements, or membership subscription agreements.

(5) As a general policy, personal liability will be required of the members of an association of farmers.

(c) *Loan to an individual farmowner or family farm corporation or partnership.* For every loan to an individual farm owner or family farm corporation or partnership, a real estate mortgage will be taken on the farm, whenever practicable, in accordance with subpart B of part 1927 of this chapter. However,

if requested by the applicant, a mortgage may be taken on the units and at least enough land to clearly provide adequate security for the loan as determined by an appraisal. In such cases, the loan must meet the following conditions:

(1) If the tract to be mortgaged is covered by a prior lien which also applies to other land, the tract to be given as security must either:

(i) Be released from the prior lien or subordinated to permit a first lien for the LH loan, or

(ii) Provide adequate security for the entire prior lien debt and the LH loan and comply with 7 CFR part 3550.

(2) Personal liability will be required of all stockholders or partners.

[45 FR 47655, July 16, 1980, as amended at 46 FR 61990, Dec. 21, 1981; 56 FR 67482, Dec. 31, 1991; 67 FR 78328, Dec. 24, 2002]

#### § 1944.169 Technical, legal, and other services.

(a) *Appraisals.* (1) An appraisal is required when real estate is taken as security. The appraisal must be made in accordance with the Uniform Standards of Professional Appraisal Practices (available in any Rural Development office).

(2) If the loan includes funds for purchasing household furnishings or equipment which will not become part of the real estate, a narrative type appraisal, identifying the items, will be prepared by the employee preparing the real estate appraisal. The value placed on such furnishings will be based on comparable selling prices in the area.

(b) *Architectural and engineering services.* Housing and related facilities will be planned and designed to meet the needs of the type of occupants who will likely occupy it. A written contract for architectural or engineering services will be required as outlined in subpart A of part 1924 of this chapter.

(c) *Construction and development policies—*(1) *Planning and construction.* Housing and related facilities will be planned in accordance with subpart A of part 1924 of this chapter and exhibit A-3 of this subpart. Construction and development will be performed in accordance with subpart A of part 1924 of this chapter.

(2) *Labor standards provisions.* Construction financed with the assistance of an LH grant will be subject to the provisions of the Davis-Bacon and related acts, and the regulations implementing those acts published by the Department of Labor regulations at 29 CFR parts 1, 3, and 5.

(3) *Compliance with local codes and regulations.* Planning construction, and operation of housing finance with the LH loan or grant will conform with all applicable Federal, State, and local laws, ordinances, codes, and regulations governing such matters as zoning, construction, heating, plumbing, electrical installation, fire prevention, health and safety, and sanitation. If there are no local or State codes and regulations governing these matters, the State Director will issue appropriate guidelines to insure that the facilities meet all FmHA or its successor agency under Public Law 103-354 requirements.

(4) *Land use objectives.* Location of projects shall, to the extent practicable, result in the preservation of Important Farmlands and Forestlands, Prime Rangeland and Wetlands. State Directors will assure that FmHA or its successor agency under Public Law 103-354 actions, investments, and programs on non-Federal lands are consistent with State and local land use plans and programs to the extent practicable. In carrying this out, State Directors will:

(i) Attempt to integrate departmental and State and local land use policies and programs.

(ii) Identify and minimize to the extent practicable adverse environmental, economic, and social effects of FmHA or its successor agency under Public Law 103-354 projects and programs.

(iii) Provide landholders and other concerned people information about the alternatives to, and the associated environmental, social, and economic implications of proposed actions.

(iv) Refrain from enabling others to irreversibly convert these lands or encroaching or enabling other encroachments on flood plains unless there are no practicable alternatives.

(v) In unusual circumstances when the State Director is unable to make a determination regarding land classi-

fication, the State Director will request assistance from the Chief of the Natural Resources Conservation Service in Washington, DC.

(d) *Optioning of land.* If a loan or grant includes funds to purchase real estate, an acceptable option to purchase or purchase agreement will be included in the application. After the loan is approved, the District Director will have Form FmHA or its successor agency under Public Law 103-354 440-35, "Acceptance of Option," or other appropriate form of acceptance, completed, signed, and mailed to the seller.

(e) *Insurance.* The State Director will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with subpart A of part 1806 of this chapter (FmHA Instruction 426.1).

(2) Suitable Workman's Compensation Insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged, or may be required when appropriate, to obtain liability insurance.

(f) *Title clearance and legal services.* When the applicant is an organization, or has special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from the OGC. In other cases, the provisions of subpart B of part 1927 of this chapter regarding title clearance and legal services apply.

(g) *Use of and accountability for loan and grant funds.* Loan and grant funds and any funds furnished by the borrower for authorized purposes will be deposited and handled in accordance with subpart A of part 1902 of this chapter.

(1) Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan or grant funds could not be used, should not be deposited in the supervised bank account with loan or grant funds.

(2) For all organizations collateral will be pledged by the financial institution for any loan or grant funds or borrower contribution in accordance with § 1902.7 of this chapter.

(3) Funds may be disbursed from the supervised bank account only for authorized loan or grant purposes.

(h) *Bond counsel.* All public bodies offering bonds as security for the LH loan are required to obtain the services of recognized bond counsel in the preparation of evidence of indebtedness in accordance with § 1942.19 of subpart A of part 1942 of this chapter except as provided in paragraph 1 of exhibit H of this subpart.

(i) *Surety bonding and fidelity coverage.* (1) The provisions of subpart A of part 1924 of this chapter pertaining to surety bonds are applicable to LH loans and grants.

(2) If the applicant is an organization, it will provide fidelity coverage for any personnel entrusted with the receipt, custody, and disbursement of any project monies, securities, or readily saleable personal property other than money or securities. Fidelity coverage will be in force as soon as there are assets in the organization in accordance with the provisions described at paragraph XV A of exhibit B of subpart C of part 1930 of this chapter.

(j) *Contracts for legal services.* On projects requiring extensive legal services, the applicant will be required to have a written contract for these services. All such contracts will be subject to review and approval by FmHA or its successor agency under Public Law 103-354 and, therefore, should be submitted to FmHA or its successor agency under Public Law 103-354 before execution by the applicant. Contracts will provide for the types of service to be performed and the amount of the fees to be paid, either in lump-sum on the completion of all services or in installments as services are performed. "Legal Service Agreement," exhibit G of this subpart, may be used.

[45 FR 47655, July 16, 1980, as amended at 46 FR 36112, July 14, 1981; 48 FR 7159, Feb. 18, 1983; 56 FR 67482, Dec. 31, 1991; 58 FR 40951, July 30, 1993; 58 FR 44752, Aug. 25, 1993; 61 FR 56116, Oct. 31, 1996; 64 FR 24480, May 6, 1999]

#### § 1944.170 Preapplication requirements and processing.

A two-stage application process is used. In stage one, applicants submit a preapplication, which is used to determine preliminary eligibility and feasibility. Preapplications selected for further processing will be invited to submit an application. The preapplication consists of SF-424.2, "Application for Federal Assistance (For Construction)" and the information listed in exhibit A-1 or A-2 of this subpart, as applicable. Preapplications for off-farm new construction loans and grants will be accepted and processed in accordance with this section when NOFA is announced in the FEDERAL REGISTER. Applicants are advised to read the notice carefully for any restrictions on loan or grant amounts. Preapplications for repair and rehabilitation of existing off-farm LH units and new units of on-farm housing may be submitted any time during the year and will be processed on a first-come, first-served basis in accordance with subpart L of part 1940 of this chapter.

(a) *Preapplications for new units in off-farm facilities.* (1) The Agency will publish NOFA annually in the FEDERAL REGISTER with deadlines for submitting preapplications. The notice will include the amount of funds available, any limit on the amount of individual loan and grant requests, any limit on the amount of funds that any one State may receive, and the loan scoring criteria.

(2) The preapplication must be submitted in accordance with NOFA and consists of SF-424.2, "Application for Federal Assistance (For Construction)", and the information required by exhibit A-1 of this subpart. The preapplication will be used by the Agency to determine preliminary eligibility and to score and rank proposals.

(b) *Preliminary eligibility assessment of preapplications received in response to NOFA.* The Agency will make a preliminary eligibility assessment using the following criteria:

(1) The preapplication was received by the submission deadline specified in NOFA;

(2) The preapplication is complete as specified in NOFA;